

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID GONZALES,

Plaintiff,

v.

ROY L. STRALLA, et al.,

Defendants.

Case No. 3:13-cv-00648-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (dkt. no. 3) ("R&R") relating to plaintiff's application to proceed *in forma pauperis* (dkt. no. 1) and *pro se* complaint (dkt. no. 1-1). No objection to the R&R has been filed.

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to which no

1 objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
2 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that
3 district courts are not required to review "any issue that is not the subject of an
4 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to
9 determine whether to adopt Magistrate Judge Cook's R&R. Upon reviewing the R&R and
10 underlying briefs, this Court finds good cause to accept and adopt the Magistrate
11 Judge's R&R in full.

12 It is therefore ordered, adjudged and decreed that the Report and
13 Recommendation of Magistrate Judge Valerie P. Cooke (dkt. no. 3) is accepted and
14 adopted in its entirety.

15 It is ordered that plaintiff's application to proceed *in form pauperis* (dkt. no. 1)
16 without having to prepay the full filing fee is granted; plaintiff shall not be required to pay
17 an initial installment fee. Nevertheless, the full filing fee shall still be due, pursuant to 28
18 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act of 1996. Plaintiff is
19 permitted to maintain this action to conclusion without the necessity of prepayment of
20 fees or costs or the giving of security therefor. This order granting *in forma pauperis*
21 status shall not extend to the issuance of subpoenas at government expense.

22 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the
23 Prisoner Litigation Reform Act of 1996, the Nevada Department of Corrections shall pay
24 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding
25 month's deposit to the account of David Gonzales, Inmate No. 93054 (in months that the
26 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The
27 Clerk shall send a copy of this order to the Attention of the Chief of Inmate Services for
28 the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

1 It is further ordered that, even if this action is dismissed, or is otherwise
2 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as
3 amended by the Prisoner Litigation Reform Act of 1996.

4 It is further ordered that the Clerk shall detach and file the complaint (dkt. no. 1-1).

5 It is further ordered that the complaint be dismissed without prejudice.

6 DATED THIS 16th day of September 2014.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

8 MIRANDA M. DU
9 UNITED STATES DISTRICT JUDGE